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Congress of the United States
CONGRESSIONAL OVERSIGHT PANEL

Opening Statement of Damon Silvers

Congressional Oversight Panel Hearing on TARP Foreclosure Mitigation Programs

October 27, 2010

Good morning. Today's hearing is the fourth this Panel has held addressing the foreclosure crisis. Congress explicitly required in the Emergency Economic Stabilization Act of 2008 that the powers it granted the Treasury Department in the Act be used in part to reduce the incidence of foreclosures. In response, the Treasury Department in the spring of 2009 created the HAMP program and since then has created a number of other programs aimed at reducing foreclosures.

As I have said at every hearing on this subject, foreclosing on a family's home is not a mere financial transaction. It marks a profound financial loss and often devastating emotional defeat for the homeowner, psychological trauma and social dislocation for the homeowners' children, falling property values and destabilized communities for the homeowners' neighbors. Mass foreclosures are a sure sign of a failing economy and a society that has been unable to provide basic economic security to its citizens. Mass foreclosures should no more be encouraged by our government than should contagious diseases or catastrophic floods.

These reasons alone would justify aggressive government action to prevent foreclosures in the wake of the housing bubble and the epidemic of exploitative lending practices by our financial institutions. But the social impact of foreclosures is not by any means the full story of the harm done to our country by the foreclosure epidemic. Mass foreclosures drive down real estate prices—shrinking the wealth of American households, weakening consumer confidence and the solvency of our financial system.

It has been clear since the beginning of the financial crisis that borrowers, lenders, and the public at large had a profound interest in restructuring loans to enable homeowners who had the ability to make lower payments to stay in their homes. And yet as the financial crisis escalated, the banks in their role as mortgage servicers simply did not restructure the loans. The Treasury Department created HAMP, offering $50 billion in incentives for the banks to restructure the loans—and a year and a half later, we have only 467,000 permanent modifications, compared to 7 million homeowners in the process of foreclosure. Let me note that I think that helping 467,000 families avoid foreclosure is a good thing. But it does not appear to be good enough.

And now we have learned that the foreclosure process itself, and our system of property law itself is cracking under the strain of the bubble and the bust. There appears to be strong evidence that servicer banks have improperly executed and filed with the courts a large number of affidavits in the pursuit of foreclosures. Worse yet, since the affidavit revelations, evidence has mounted that there are substantive problems with the liens that support significant numbers of securitized mortgages.

Today I hope we can shed light on whether 467,000 permanent modifications, plus another 20,000 or so permanent modifications a month is the best that we can hope for from HAMP. In particular I would like to understand why NACA, a housing advocate group with a budget of less than $20 million, can process 20,000 people seeking mortgage modifications in one week in one city, and the United States government with a budget of $50 billion can only do 20,000 permanent modifications a month across the whole country.

Second, I would like to know whether HAMP has paid out money to servicers to ensure they did not foreclose on homeowners in situations where the servicer did not actually have a valid lien, or had filed a false affidavit with a court. Further I would like to know what plans the Treasury Department has for finding out whether this has occurred.

Finally, I would like to know what plans the Treasury Department and the OCC have for dealing with the possibility that either the major servicer banks will be held liable for their failures to properly service $7 trillion in mortgages, or that the collateral for significant amounts of mortgage loans will turn out to be invalid. These possibilities would appear to present systemic risks of the type that TARP was enacted to address, and in particular, would appear to have grave consequences for the very institutions that TARP initially capitalized, and who were allowed to exit TARP on the theory they were now healthy.

This hearing involves some of the most important issues facing our country today. I look forward to the witnesses' testimony.